



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

WTI/170163

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**PRELIMINARY RECITALS**

Pursuant to a petition filed November 12, 2015, under Wis. Stat. § 49.85(4), to review a decision by the Wisconsin Works (W-2) in regard to W2, a hearing was held on December 23, 2015, at Oshkosh, Wisconsin.

The issue for determination is whether the department may intercept petitioner's tax refunds to recover a W-2 overpayment.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

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Respondent:

Department of Children and Families  
201 East Washington Avenue, Room G200  
Madison, Wisconsin 53703

By: Jessica Heidemann  
Wisconsin Works (W-2)

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Winnebago County.
2. Prior to June 2, 2015 the agency mailed the petitioner a notice of overpayment stating that the petitioner was overpaid \$2,380.00 in W-2 benefits, under claim number [REDACTED], for the period from October 22, 2014 to February 28, 2015.
3. On June 2, 2015 the agency sent the petitioner a repayment agreement.

4. On July 2, 2015, August 4, 2015, and September 2, 2015 the agency sent the petitioner dunning notices reminding her that she still owed the overpayment debt.
5. On October 16, 2015 the agency sent the petitioner a notice of tax intercept.
6. On November 16, 2015 the Division of Hearings and Appeals received the petitioner's Request for Fair Hearing.

### **DISCUSSION**

The Department of Workforce Development is required to recover all overpayments of public assistance benefits. See Wis. Stat., §§49.195(3), 49.155. Wis. Stat., §49.85, provides that the department shall, at least annually, certify to the Department of Revenue the amounts that it has determined that it may recover resulting from overpayments of general relief benefits, food stamps, W-2 benefits including child care, and medical assistance.

The Department of Workforce Development must notify the person that it intends to certify the overpayment to the Department of Revenue for setoff from his/her state income tax refund and must inform the person that he/she may appeal the decision by requesting a hearing. Id. at §49.85(3).

The hearing right is described in Wis. Stat., §49.85(4)(b), as follows:

If a person has requested a hearing under this subsection, the department ... shall hold a contested case hearing under s. 227.44, except that the department ... may limit the scope of the hearing to exclude issues that were presented at a prior hearing or that could have been presented at a prior opportunity for hearing.

The petitioner sought to challenge the underlying overpayment. Specifically the petitioner argued that there should have never been an overpayment, and if so, the overpayment amount was incorrect. The petitioner further argued that she attempted to appeal the underlying overpayment, but no hearing was scheduled or held. I note that the Division of Hearings and Appeals does not handle W-2 overpayment hearings. Those hearings are conducted by the W-2 agency. All notices were sent to the petitioner at her current address. At a hearing regarding a tax intercept, my review is limited to whether the tax intercept was implemented correctly. I have no jurisdiction to address the underlying overpayment. The agency sent the petitioner an overpayment notice, repayment agreement, three dunning notices, and tax intercept notice. Thus, I must conclude that the agency properly implemented a tax intercept.

### **CONCLUSIONS OF LAW**

The department may intercept petitioner's tax refunds to recover a W-2 overpayment.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 11th day of January, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on January 11, 2016.

Wisconsin Works (W-2)  
Public Assistance Collection Unit